NOMINATION—INTERSTATE COMMERCE COMMISSION

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

NOMINATION OF

HEATHER J. GRADISON, TO BE COMMISSIONER, INTERSTATE COMMERCE COMMISSION

MAY 18, 1982

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NOMINATION—INTERSTATE COMMERCE COMMISSION

TUESDAY, MAY 18, 1982

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D.C.

The committee met, pursuant to notice, at 10:07 a.m., in room 235, Russell Senate Office Building, Hon. John C. Danforth, presiding.

Staff member assigned to this hearing: Anne M. Gavaghan, Staff Director and Linda J. Morgan, minority staff counsel.

Senator DANFORTH. This hearing is on the nomination of Heather Gradison to be a member of the Interstate Commerce Commission. We are delighted that Senator Metzenbaum is with us this morning. Senator, do you have a word that you would like to say?

STATEMENT OF HON. HOWARD M. METZENBAUM, U.S. SENATOR FROM OHIO

Senator METZENBAUM. Indeed. I am particularly pleased to be here to present Heather Gradison and recommend strongly her nomination to the Interstate Commerce Commission. I think it is a special honor for Ohio that she is the first Ohioan to be appointed in the last 20 years, but beyond that, she is only the third woman ever to be appointed to the Commission.

That alone would be significant and important, but she has so much more that she brings to the job. She has a record of experience. She has worked with Southern Railway and knows the industry well. Some might very appropriately say well, does that not, then, create a kind of situation where she will be too industry-minded. Well, I think that might be the case if she had been the chairman of the board or if she had been the president of the company or something of the kind.

But in fact, she started at a low level in the company. She worked her way up based upon her ability. She comes to this job with experience in pricing approximately $75 million in gross corporate revenues and she had been involved in the development and analysis of market and modal data. She had, in substance, developed to a point of strong responsibility with the company.

I think that it is refreshing that she brings both youthful vigor and experience to the Interstate Commerce Commission. I have thought long and hard about some reason that I might be opposed to her, and other than the fact that her husband once in a while

votes wrongly in connection with some of my measures—which even that I would make allowances for—I know of no reason that this body should not confirm her, and I hope that you will act very promptly. And I am sure she will do a superb job on that body.

Senator DANFORTH. Thank you very much, Senator Metzenbaum. We very much appreciate your being with us today.

Senator METZENBAUM. Thank you.

Senator DANFORTH. I have a letter that was sent to Senator Packwood from Senator Glenn, also giving glowing recommendations of you, Mrs. Gradison, and that will be included in the record.

Do you have any comments that you would like to make?

STATEMENT OF HEATHER J. GRADISON

Ms. GRADISON. First of all, I would like to thank Senator Metzenbaum for introducing me. Thank you for scheduling timely hearings and particularly, I would like to thank the staffs on both the majority and the minority side for the time that they have spent with me through the last few weeks. They have been very helpful and I have appreciated their support.

I think I bring to the ICC a new perspective and dimension that is unique. There have been some questions as to whether or not my 8 years with Southern Railway is enough. Well, it is a start, and I think I have shown people that I am a hard worker, I am interested in the industry, and that I will do a good job in my performance.

So I am looking forward to the challenge if I am confirmed, and I thank you for the hearing.

[The biographical sketch, questions and answers, and additional material submitted for the record follow:]

BIOGRAPHICAL SKETCH OF HEATHER JANE STIRTON GRADISON

Address: 2200 Victory Parkway, Cincinnati, Ohio 45206 and 322 2d Street SE., Washington, D.C. 20003.

Date and Place of Birth: September 6, 1952, Houston, Tex.

Marital Status: Married to Willis D. Gradison, Jr.

Names and Ages of Children: Maile Jo Gradison, Born: November 16, 1981.

Education: Radford College, Radford, Va. Bachelor of Applied Arts Degree—1975. George Washington University, Graduate Business studies—1976, 1978.

Employment Record: Southern Railway System 1974-Present. Positions Held: Summer Intern; Management Trainee; Research Assistant; Assistant Rate Officer.

Current Position: Rate Officer—Responsible for pricing approximately $75 million in gross corporate revenues, development and analysis of market and modal data and determination of cost/revenue impacts in order to recommend pricing actions. Responsibility includes maximizing profitability and increasing market penetration. Responsible for coordination of exempt (deregulated) commodity pricing for fruits and vegetables.

Memberships: Transportation Research Forum (not currently active). Treasurer—1979. Women's Transportation Seminar (not currently active).

QUESTIONS OF THE COMMITTEE AND THE ANSWERS THERETO

Question 1. Why do you think you are qualified to serve as an ICC Commissioner?

Answer. Since 1974 I have been actively involved in the transportation industry. As a Rate Officer for Southern Railway, I have dealt with Interstate Commerce Commission regulations on a daily basis. I have had responsibility for pricing of fruits and vegetables which were deregulated by the Commission, and for pricing of over $75 million in gross corporate revenues from regulated commodities.

Question 2. Do you view yourself as a regulator of deregulator?

Answer. I view myself as a deregulator, defined as one who prefers to see regulations kept simple and to a minimum. My obligation as a Commissioner would be to

carry out the desires of Congress which has passed legislation specifically designed to reduce unnecessary, inefficient and burdensome government regulation in areas within the jurisdiction of the I.C.C.

Question 3. The Staggers Rail Act of 1980 made major changes in the way the railroads were running their businesses. How did those changes affect the way you were doing your job as a rate officer?

Answer. As a rate officer for Southern Railway, the Staggers Act affected the manner in which I could comunicate with other carriers in order to establish competitive joint line rates. Under the prior law, I represented Southern Railway at bimonthly meetings of the Southern Ports Foreign Freight Traffic Committee. At these meetings, which typically ran for several days, we discussed and voted on scores of joint line rates for all commodities to and from the Southeastern ports. There were other Freight Bureau meetings based on territorial jurisdictions which I attended from time to time for rate negotiating purposes. When I did attend, it was only for the purpose of negotiating rates for my assigned commodities. After the Staggers Act was passed, Southern briefly discontinued sending any representatives to Freight Bureau meetings. When several points of the Act were clarified, they resumed limited participation in Freight Bureau meetings. This necessitated more one-on-one negotiation between carriers in place of the previous group ratemaking process.

These changes were initially cumbersome and time-consuming. Within months, the carriers were able to adjust to the new environment and provide for more timely rate adjustments. This was a result of both the Act, which provided for earlier effective dates, and from experience gained by the carriers in working under the new rules.

Question 4. Please describe your responsibilities as the coordinator of pricing for deregulated fresh fruits and vegetables. Would you characterize Southern Railway's experience with these deregulated commodities as successful?

Answer. After the Commission deregulated fresh fruits and vegetables, which was later confirmed by the Staggers Act, I was responsible for developing, implementing and applying a rate structure for these commodities. Our goals were twofold:

(1) To increase market share, and

(2) To gain experience in pricing without tariffs which could be further developed and applied if additional areas were deregulated.

Southern Railway was successful in expanding its market share because of greater pricing flexibility. As a result of this system, I was able to negotiate and quote prices which were effective immediately and which could be changed on a daily basis.

Question 5. Some concern has been expressed regarding you lack of familiarity with the nonrail industries regulated by the Interstate Commerce Commission. Have you had any contact with these other industries either in terms of pricing competitive railroad movements or pricing intermodal movements?

Answer. In pricing, the first determination one must make is "What is the competition." This includes service, equipment, and accessibility of origin and destination. For railroads, the competitors are other rail carriers, trucks and barges. To be a successful competitor, it was necessary to know my competition both rail and non-rail.

Question 6. As a rate officer, were you able to discuss proposed rate and service changes with shippers, and the effect of any such changes on their businesses?

Answer. Yes, this was a major aspect of my responsibility with Southern. Some of the industries I worked with were: tobacco, cement, lime, canned goods and cotton. As an example: I conducted direct meetings with all of the major tobacco shippers in the Southeast. This resulted in an entirely new rate structure for the unmanufactured tobacco industry within our region.

Question 7. As an ICC Commissioner, what would you hope to accomplish?

Answer. As an ICC Commissioner I hope to accomplish the following:

Full implementation of the national transportation policy as set forth in the Motor Carrier Act of 1980 and the Staggers Rail Act.

Encouragement of the application of modern techniques including computerization of tariffs so that ICC information will be readily accessible to both carriers and shippers alike.

Equitable regulation or deregulation among competing intermodal carriers.

Exploration of deregulation of transportation operations.

Providing workable, understandable and consistent rulings for all modes.

Question 8. In view of the ICC's limited budget, the agency clearly must make the best use of the resources available to it. What do you see as the agency's top priorities? Are there any regulatory activities which the agency should not be involved

in? If so, can the agency discontinue these activities on its own, or must Congress act to relieve it of such responsibilities?

Answer. As a Commissioner, I would give top priority to the most recent legislation passed by Congress. Activities formerly undertaken by the Commission may no longer be necessary in light of the newest legislation and should be subject to close review.

Question 9. One of the goals of the Staggers Rail Act was to permit railroads to improve their financial viability. What do you believe the ICC is doing or should be doing to help ensure that this goal is met?

Answer. The Commission is attempting to implement the provisions of the Staggers Act which give carriers greater freedom to compete. I believe that the railroads should be encouraged to freely compete in the marketplace and have the opportunity to attract sufficient capital so as to assure a reasonable rate of return.

Question 10. A second goal of the Staggers Rail Act was to reduce Federal regulation and permit the marketplace to regulate rail service wherever possible. What do you think the ICC is doing to implement this goal?

Answer. From my own experience, the Commission's rulings regarding deregulation of TOFC and fresh fruits and vegetables have had a positive effect on railroads' ability to compete.

The Congress has provided most of the needed tools i.e., contract rates, LDL and joint line surcharges, and timely abandonment procedures. It is now up to the managements of the railroads to make full use of these tools.

Question 11. The Staggers Rail Act also gave the ICC broad flexibility to make changes in areas of regulation not specified in the Act. What areas do you think the ICC should explore to further relieve the railroad industry from economic deregulation?

Answer. Some additional areas under consideration by the Commission at this time, are: export coal, in No. Ex Parte 346 (Sub-No. 7), and the box car exemption in No. Ex Parte 346 (Sub-No. 8). As carriers and shippers alike propose additional areas for relief from regulation, the Commission should make thorough and expeditious examination of these proposals.

Question 12. Under what circumstances, if any, do you believe railroads should be required to continue to operate low-density rail lines that show little or no signs of becoming financially self-sufficient? What alternatives would you suggest for shippers on such lines?

Answer. In general, railroads should not be required to operate lines that are not financially self-sufficient. The principal alternative when rail lines are abandoned is the use of other transportation modes or an offer of financial assistance to the railroad from the shipper and/or the affected community which would provide a continuation of rail service.

Question 13. The Interstate Commerce Commission has recently approved major railroad consolidations with few or no protective conditions attached to them. It has also issued recent regulations on protective conditions in railroad consolidations proceedings. What is your position on railroad consolidations generally? Are there any circumstances where you think the Commission ought to impose protective conditions?

Answer. Generally, I am in favor of railroad consolidation. Not long ago, there were over 60 Class I railroads in the continental United States. I expect to see less than 20 sometime in the next decade. This should provide for a more closely integrated rail network, enhanced financial viability and continued vigorous competition. In general, I am against protective conditions. On a case-by-case basis there may be a need for the imposition of some conditions.

Question 14. Would you like to see changes in the regulation of the intercity bus industry, and if so, to what extent?

Answer. I support legislative changes which would, at a minimum, relax entry standards for the intercity bus industry, along the lines of the markup by the full Committee which I attended on May 11th.

Question 15. There is a fear among those concerned with rural areas, that by deregulating the bus industry many communities will lose their own means of transportation. Do you see this as a problem?

Answer. I fully understand the concern expressed by representatives of rural areas during the May 11th markup, that some communities might lose their only means of transportation. Similar fears were expressed concerning motor carriers of property upon enactment of the Motor Carrier Act of 1980. These fears have generally proven to be unfounded. I will, however, encourage the Commission to monitor fully the effect of any new legislation on the quality and quantity of bus service.

Question 16. During consideration of the Motor Carrier Act, members of this Committee made it clear that it was not necessary for an applicant for motor carrier authority to produce statements of shipper support in order to demonstrate the public's interest in its proposed service. Further, it was said the support by public officials, consumers, and other non-shipper entities was sufficient to demonstrate public interest. How do you view any effort on the part of the Commission to limit non-shipper forms of support for motor carrier applications?

Answer. Non-shipper forms of support should not be limited by the Commission. Every opportunity should be allowed for the public to express their views. I believe that both shipper and non-shipper support are desirable and helpful but not legally required by the Motor Carrier Act of 1980.

Question 17. The Motor Carrier Act of 1980 eased entry standards for motor carriers of freight.

(a) What is your regulatory philosophy regarding entry into the motor carrier freight business?

(b) In your mind has the current Interstate Commerce Commission been too restrictive, too liberal or just right in its interpretation of motor carrier entry policy?

Answer. (a) I support the philosophy of Congress embodied in the Motor Carrier Act of 1980, specifically, that entry standards should be relaxed.

(b) The current Commission's rulings with regard to entry policy have been represented by some observers as too restrictive and by portions of the motor industry as too liberal. Each application must be reviewed on a case-by-case basis bearing in mind the intent of Congress as provided for in the Motor Carrier Act of 1980.

Question 18. The Interstate Commerce Commission has recommended to Congress elimination of that part of entry policy which requires a showing of "public need" for transportation services. A carrier seeking expanded or new authority to operate would be required to show that it is "fit, willing, and able" to operate.

(a) What is your view of this recommendation?

(b) How would you define "fit, willing and able"?

Answer. (a) It is not clear whether it is necessary for the Congress to provide further legislation on this point. The Motor Carrier Act of 1980 provided that an application be granted if the proposed service would serve a useful public purpose and if the applicant is fit, willing, and able to perform the service.

(b) A carrier's fitness is demonstrated by its ability to conform to operational and safety regulations. A carrier's willingness is reflected by a filing of an application to provide the service and a carrier's ability can be proved by its past operations. In the case of a new carrier, its operational plan can be reviewed to determine its ability to provide the proposed service.

Question 19. There are several bills in Congress to grant rights of way across railroad land to companies wishing to build coal slurry pipelines.

(a) What is your view of such federal legislation?

(b) In the bills being discussed authority to grant rights of eminent domain are vested in either the Interstate Commerce Commission or the Federal Energy Regulatory Commission. Which agency should power be vested in?

Answer. Some of the issues this type of legislation will have to take into consideration are: low cost transportation of coal, financial viability of the railroads, States vs. Federal powers with regard to eminent domain and water rights; and the role to be played by coal in a comprehensive national energy policy. Congress must first determine whether this is to be treated primarily as an energy or transportation issue before either agency is vested with authority to act on such eminent domain issues.

MINORITY QUESTIONS AND THE ANSWERS THERETO

Question 1. What specific transportation experience would you bring to the position of ICC Commissioner? What would you hope to accomplish in this position?

Answer. Since 1974 I have been actively involved in the transportation industry. As a Rate Officer for Southern Railway, I have dealt with Interstate Commerce Commission regulations on a daily basis. I have had responsibility for pricing of fruits and vegetables which were deregulated by the Commission, and for pricing of over $75 million in gross corporate revenues from regulated commodities.

As an ICC Commissioner I hope to accomplish the following:

Full implementation of the national transportation policy as set forth in the Motor Carrier Act of 1980 and the Staggers Rail Act.

Encouragement of the application of modern techniques including computerization of tariffs so that ICC information will be readily accessible to both carriers and shippers alike.

Equitable regulation or deregulation among competing intermodal carriers.
Exploration of deregulation of transportation operations.
Providing workable, understandable and consistent rulings for all modes.

Question 2. How would you characterize your regulatory philosophy? How would you seek to carry out this philosophy if confirmed as Commissioner? In this regard, how do you view the future role of the Commission in promoting the regulatory reform efforts of Congress? Are there directions in which you believe the Commission should be moving?

Answer. I view myself as a deregulator, defined as one who prefers to see regulations kept simple, and to a minimum. My obligation as a Commissioner would be to carry out the desires of Congress which has passed legislation specifically designed to reduce unnecessary, inefficient and burdensome government regulation in areas within the jurisdiction of the I.C.C.

Question 3. What priorities do you believe the Commission should be establishing in the area of transportation regulation? Are there specific issues which you believe should be addressed by the Commission with respect to the various modes? Are there areas in which the Commission should become more involved or less involved?

Answer. I believe the Commission should treat all competing modes equally with regard to regulation affecting their ability to compete with one another.

Question 4. The Commission has an important responsibility to implement the Motor Carrier Act of 1980 and the Staggers Rail Act of 1980. How do you perceive the intent of Congress in the passage of the legislation? If confirmed as Commissioner what affirmative steps would you take to ensure that the intent of Congress is being carried out?

Answer. The intent of Congress is clearly stated in both Acts:

The goals of the Staggers Act were: to permit railroads to improve their financial viability, reduce Federal regulation, and permit the marketplace to regulate rail service wherever possible.

The goals of the Motor Carrier Act of 1980 include meeting the needs of shippers, receivers and consumers; allowing price flexibility; encouraging greater efficiency, particularly in the use of fuel; and providing service to small communities.

I will examine each case which comes before the Commission with the above goals in mind in order to carry out the intent of Congress.

Question 5. Much attention has been focused on the Commission's current implementation of the Motor Carrier Act. Specifically, members of this Committee have raised concerns about certain Commission actions having the effect of restricting entry, which is clearly contrary to the Committee's express committment to freer entry. What is your position on this issue? How do you perceive the direction in which the Commission has been, or should be, moving in the area of entry?

Answer. The current Commission's rulings with regard to entry policy have been represented by some observers as to restrictive and by portions of the motor industry as too liberal. Each application must be reviewed on a case-by-case basis bearing in mind the intent of Congress as provided for in the motor Carrier Act of 1980, which is designed to provide for increased competition through relaxed entry requirements. As a Commissioner, I will work to see that the statute is fully implemented as written.

Question 6. Specific concern has been raised about the Commission seeming to require that shipper support be shown for every aspect of an application for motor carrier authority, a requirement which is clearly contrary to Congressional intent. What is your view of the Commission's actions in this regard?

Answer. Every opportunity should be allowed for the public to express their views. I believe that both shipper and non-shipper support are desirable and helpful, but not legally required by the Motor Carrier Act of 1980.

Question 7. How do you view the impact of the Motor Carrier Act on small shippers and small communities? Are there actions which the Commission should be taking in this regard?

Answer. The ICC has a responsibility to assure the adequacy of service to small shippers and communities. This was an express goal of the Motor Carrier Act of 1980 and the Commission must continually maintain oversight for the purpose of assuring that the needs of small shippers and communities are met.

Question 8. Concerns have been raised that the Commission has been slow to implement the Staggers Act. What is your reaction to this concern, in light of the ongoing rulemakings at the Commission pursuant to this legislation? Are there other actions which the Commission should be taking to further promote this Act?

Answer. From my personal experience, the ICC's actions regarding the Staggers Act have been measured and orderly. As a member of the Commission, I would vigorously support prompt implementation of the Act in its entirety.

Question 9. During the Congressional deliberations on the Staggers Act, much attention was focused on the rates associated with the movement of coal. What is your philosophy with respect to coal rates? Are you satisfied with the Commission's actions in this area?

Answer. It is essential that consistent, rational and workable rulings emerge from the ICC due to the importance of coal revenue for railroads' profitability, the effect of coal on our national energy policy and on our balance of payments.

The Commission must act promptly to put in place basic guidelines on coal movements.

Question 10. What is your view of the common carrier obligation? How do you perceive the Commission's role in defining this obligation under the Rail and Motor Carrier Acts?

Answer. The extent of the common carrier obligation is currently under consideration by the Commission (Ex Parte No. MC-77 (Sub-No. 3)). I will give the proceeding careful review if I am confirmed.

Question 11. In recent months, the Commission has indicated a need to increase its enforcement efforts. How do you view the Commission's role in this area? Are increased enforcement efforts necessary?

Answer. I believe it is the Commission's responsibility to enforce its regulations in an even-handed manner. I intend to examine carefully the Commission's existing enforcement program to determine if increased efforts are required.

Question 12. A principal focus of all regulatory reform efforts has been procedural reform, namely reduction in unnecessary delays and procedures. Have the Commission's activities been adequate in this area?

Answer. The main reason I chose to pursue this position on the ICC was my daily experience working within the Commission's regulations and rulings. Prior to the Staggers Act, I often found the procedures to be cumbersome, inconsistent and unduly burdensome.

I am dedicated to reducing red tape and unnecessary delay that are both unproductive and anticompetitive.

Question 13. You state that you have had extensive contact with the Commission in your capacity at Southern Railway. In light of this past contact, what perception of the Commission would you bring to the job of Commissioner if confirmed? How do you perceive the future role of the Commission?

Answer. My perception of the Commission was that the arm of regulation was too long and that the rulings were often inconsistent. I believe that the ICC must limit its involvement in carriers' daily activities to the extent provided by the Staggers Rail Act and the Motor Carrier Act of 1980, and that it must assure the competitive role of all modes in our national transportation system.

Question 14. In light of your past experience with the rail industry, what do you see as the important issues facing the rail industry? If confirmed as Commissioner, how would you view your role in dealing with these issues?

Answer. Some important issues facing the rail industry are: financial viability; adjustment to newly merged systems; development of competitive capabilities in a deregulated environment.

If confirmed as a Commissioner, I would develop a working knowledge of all the transportation legislation which is pertinent to the Commission's mandate, and I would see that the intent of Congress is implemented in an expeditious manner.

Question 15. In answers to Committee questions, you characterized the basis for your regulatory philosophy as seeking regulations which are "simple and to a minimum." Under the Staggers Rail Act and the Motor Carrier Act, is the Commission moving in a direction which comports with your philosophy?

Answer. The Commission has generally moved in a direction which follows my regulatory philosophy. At times, however, the Commission has failed to explain fully its position. An example of this, which I understand has now been corrected, is the application of RCCR increases. These serve as quarterly inflation levelers for rail freight rates. The initial application of those increases was mandatory on joint line hauls. After the carriers explained to the Commission that there were instances of increases in which they prefered not to participate, they were allowed to flag out. Until this was explained to the Commission, carriers were required to take an increase on joint line traffic in all cases. The Commission ultimately clarified its intentions in the above example.

Question 16. In answers to Committee questions, you expressed your belief that "the railroads should be encouraged to freely compete in the marketplace and have the opportunity to attract sufficient capital so as to assure a reasonable rate of return." Do you believe that the Commission is implementing the regulatory reform legislation in such a way as to bring about this result?

Answer. Yes, the approval of recent mergers without DT&I Conditions is an example of providing members of the industry an opportunity to freely compete. In addition, the Commission is currently considering the exemption of export coal and the exemption of rail box cars from regulation.

Question 17. You indicate that at Southern your experience with the Staggers Act was that adjustment to the Act seemed "cumbersome." Do you believe that this is still the case? Are there areas in which the Commission could make implementation less cumbersome?

Answer. I believe that both carriers and shippers have adjusted to the new environment provided by the Staggers Act. The adjustment was initially cumbersome because carriers were not accustomed to pricing in a free market environment without anti-trust immunity. All the Commission can do is provide equal and consistent rulings and implement congressional intent. It is up to the carriers to adjust to the new competitive environment.

Question 18. In answers to Committee questions, you state that the Commission should review exemption proposals as applied for by shippers and carriers. In light of your own experience with fresh fruits and vegetables and other commodities, are there any other commodities or movements which the Commission might examine on its own initiative as provided for by its exemption authority?

Answer. In the past, the Commission has acted in response to petitions for exemption filed by rail carriers. It has not considered exemptions on its own initiative. I believe that the Commission should use its own initiative and consider exempting non-captive commodities from regulation. Exemption proceedings should be subject to public comment.

Question 19. In relating your experience with fresh fruits and vegetables, you indicate that Southern was able to expand its market share. To what do you attribute this expansion? How would this experience help you if confirmed as a Commissioner in implementation of the Staggers Act?

Answer. Southern's market share was expanded due to a willingness to solicit the business by its connections. If I an confirmed, this experience would help in my implementation of the Staggers Act, because I would attempt to see that additional areas were deregulated on a timely basis as long as the criteria of the statute were met.

Question 20. Your background indicates knowledge of the costing factors which are considered in pricing commodity movements. As you know, the issues of railraod costing has been a subject of much debate, particularly as it relates to the movement of coal. The specific issue, of course, is the contribution that a certain commodity should make to a carrier's fixed cost, over and above the variable cost of the movement. In light of your experience, do you have any thoughts on this issue? Without commenting on any pending proceedings, how do you perceive the direction in which the Commission should be going on this question?

Answer. Captive shippers should be provided with transportation at a fair price and railroads should be permitted to earn an adequate rate of return on their investment. Ideally, each movement contributes to the net earnings of the railroad. In a competitive environment revenues derived from the transportation of captive traffic contribute to other movements. If confirmed, I intend to give this issue careful review.

Question 21. It has been suggested that the various modes could be strengthened if multimodal companies could be formed—for example, if a railroad could own a trucking company without restriction what actions could the ICC take to promote such intermodalism?

Answer. I fully support intermodalism as a transportation concept, and believe that the Commission should promote it to the fullest extent possible. There are two major proceedings currently pending before the Commission pertaining to intermodal movements. One involves the requisite showing necessary for a railroad to control a motor carrier, while the other proceeding concerns exemption of the motor portion of a deregulated rail movement of trailers on flat cars. If confirmed, I would carefully consider these proceedings.

Question 22. Questions have been raised about possible conflicts which you, if confirmed as Commissioner, might have regarding your participation in certain rail proceedings. Are there proceedings from which you plan to disqualify yourself? Are there other potential problems which you see in this regard?

Answer. I intend to confer with the Commission's General Counsel upon confirmation.

Question 23. As you may know, there currently exists within the Commission the Office of Special Counsel, an independent entity which participates in ICC proceedings on behalf of the public interest. What is your view of this Office? Does it serve

an important function which should be continued? If confirmed as Commissioner would you support its continued existence?

Answer. It is essential that the public interest be taken into consideration in all ICC proceedings. I believe that it would be one of my duties as a Commissioner to assure that the public interest is a major consideration in all cases. I am not specifically familiar with the Office of Special Counsel and its reponsibilities. If I am confirmed I will give this my close attention.

Question 24. As you are aware, this is a critical time at the Commission and for the future of railroads and motor carriers. Considering the important role of the ICC Commissioners in determining this future under the Staggers Rail Act and the Motor Carrier Act, why do you believe you were chosen to be a Commissioner?

Answer. I believe I was chosen to serve on the Interstate Commerce Commission because of my specific transportation experience.

U.S. SENATE,
Washington, D.C., May 18, 1982.

Hon. BOB PACKWOOD,
Chairman, Committee on Commerce, Science, and Transportation,
Washington, D.C.

DEAR MR. CHAIRMAN: Before the Committee today is the nomination of Heather J. Gradison to serve as a member of the Interstate Commerce Commission. Mrs. Gradison is the wife of one of my distinguished colleagues, Congressman Willis D. Gradison, of Cincinnati. She is also the first Ohioan to be nominated to serve on the Commission since the Honorable John W. Bush who served from 1961-1972.

Mrs. Gradison graduated from Radford College where she made the Dean's list. She gained experience in transportation matters while working with the Southern Railway System and did graduate business work at George Washington University. She is intensely interested in being a productive member of the Interstate Commerce Commission, and I am happy to see a fellow Ohioan selected for this important position. I am confident she will be a credit to the Commission, and I urge her speedy confirmation.

Best regards.

Sincerely,

JOHN GLENN, *U.S. Senator.*

Senator DANFORTH. Thank you very much. I would like to put a few questions to you, if I may. You have worked as a rate officer for a railroad since 1974. What experiences have you had that you think would help you as an ICC Commissioner?

Ms. GRADISON. Well, as a rate officer, I was responsible for pricing about $75 million in gross corporate revenues from regulated commodities. In addition to that, I had responsibility for the deregulated fresh fruits and vegetables. When the Commission deregulated fresh fruits and vegetables prior to the Staggers Act, the carriers were uncertain as to which direction to turn. This was a new area. We had never priced without tariffs, and it was confusing for us to even consider pricing without the rate bureaus.

This changed the way we communicated with one another, and it also had an effect on the way we communicated with the shippers. It was helpful to be able to implement rates on a more timely basis, and I functioned within both regulated and deregulated environments at the same time. So I think that that experience will be helpful at the Commission.

Senator DANFORTH. How did the deregulation of fresh fruits and vegetables work out in your opinion? Was that a good thing or a bad thing?

Ms. GRADISON. I think that there were not a substantial amount of revenues involved, but the experience gained in competing and learning how to price without tariffs was the most favorable result of that deregulation. And I think that that is one of the reasons

that the Commission deregulated TOFC, COFC and, most recently, Hops. Now, the carriers are learning how to price on a daily basis.

Senator DANFORTH. Do you think it has worked out well for the shippers and also for the carriers?

Ms. GRADISON. Yes, sir, I do.

Senator DANFORTH. You indicated in your written responses that you consider yourself to be a deregulator, but you define a deregulator as one who prefers to see regulation kept simple and to a minimum. Are there areas where you think the public interest may require no regulation by the ICC?

Ms. GRADISON. Examples of that already are the fresh fruits and vegetables, TOFC, COFC, Hops. Under consideration at this time are export coal and boxcar. There may be additional commodity or equipment areas that the Commission—I know there are several that are under consideration, and they may move quickly in deregulating those.

I am specifically concerned with the effect of deregulation on transportation operations, to make certain that the carriers continue to interchange with one another and keep the public interest in mind, as well as the efficiency of operations. And I think that this orderly process that the Commission has been going through has been helpful to date.

Whether or not they will consider eliminating the regulation on more commodities at a time, rather than just one commodity at a time, we will have to look at, if I am confirmed.

Senator DANFORTH. Now, the staff has prepared a hypothetical question to try to determine your regulatory philosophy which I would like to read and get your response to. Suppose I want to start a trucking company. I go to the bank to borrow money, the bank determines I am a good risk and loans me the money.

I contract with shippers to pick up and deliver freight from point A to point B. The bank trusts me, the shippers trust me. Why should I then be required to pay $300 to the ICC to apply for a certificate to carry out my trucking operations? Where is the need for Federal regulation?

Ms. GRADISON. That is a good question. There may not be a need to apply for these certificates. At the present time it is my understanding that the Commission is approving over 95 percent of the certificate requests for the regular route, permanent application carriers.

When the trucks first came under regulation in 1937, it was a function of determining public interest. Today, the only things we need to take into consideration are safety and insurance, and that is the determination of fitness in the bus bill that you approved in your markup last week.

I think that that is probably the only reason that someone would have to file, and we may look at eliminating that requirement altogether.

Senator DANFORTH. Now, Senator Cannon has given me four questions which I will ask you. Also, he has indicated that he might have some other written questions. There may be some other members of the committee who will have written questions for you, and for that reason we will keep the record open for 2 weeks for the submission of written questions and written answers.

The first question is this: There has been a good deal of controversy recently concerning discount rates being offered by certain motor carriers. Some carriers consider discount rates to be predatory. The debate revolves around the question of when rates become predatory. Can you tell the committee what, in your view, would constitute a predatory rate in the motor carrier industry, and whether there might be a significant difference in such a standard as between the trucking and rail industries?

Ms. GRADISON. I would define predatory pricing as pricing which is aimed at putting one's competitor out of business. There is a question: At what point does a discount rate become predatory? This is presently before the Commission, and I understand that they voted on it last week.

So I cannot be specific in my response, but I would say that generally, I am against the setting of standards, be they maximums or minimums; that it has been my experience that when a maximum or a minimum is set, that then becomes the standard. And I would like to see the Commission avoid being involved in the setting of these kinds of things.

That was the first part of the question. The second part was—could you repeat the second part?

Senator DANFORTH. Well, I think the general question is what is predatory and what is not, and I think you have pretty well answered that. And then he asks whether there might be a significant difference in such a standard as between trucking and the rail industry.

Ms. GRADISON. In trucking the theory is that if one were to price in a predatory manner and, therefore, price one's competition out of business and then raise prices, that if that were to be done, there would then be carriers who would fill in at a lower price, due to the freedom of entry that resulted from the Motor Carrier Act of 1980.

Senator DANFORTH. In answer to committee questions, you indicated that a priority for you, if confirmed as Commissioner, would be to insure equal regulatory treatment of the different modes. Would you please elaborate on the statement? Are the various modes being treated equally?

Ms. GRADISON. The question is really, if carriers—if two modes must compete with one another, or three, let's take rail-barge-truck on a given commodity. Each should either be regulated equally or deregulated equally. If rail carriers are not regulated on a given commodity, motor carriers should not be, nor should barges. And that is my premise.

Senator DANFORTH. The third question from Senator Cannon is: You state in answers to committee questions that Congress has provided the tools needed for railroads to compete in the marketplace, and that it is up to management to make full use of these tools. From your experience in the rail industry, has rail management used the opportunities provided it under the Staggers Act? Is the ICC creating a competitive climate in which the transportation industries can use the tools which Congress provided?

Ms. GRADISON. From my own experience, the rail carriers are attempting to implement some of the relaxed rules that came as a result of the Staggers Act. There had been files, of course, for aban-

donments and there is the use of TOFC, COFC, fresh fruits and vegetable pricing. Each railroad seems to have a different system for pricing those commodities, and it is interesting to see the differences as they try to coordinate these systems.

Senator DANFORTH. Do you think that the railroads have been utilizing the competitive environment that we sought to give them?

Ms. GRADISON. Not to the fullest extent possible. I think that it is an industry that is often slow to change, and with the mergers that have been filed and approved—and some are still pending—I think that those will have a major effect on their ability to use the legislation which Congress passed. They have to work together, and the larger the system, the less joint line hauls that are necessary, and the more single line hauls that come as a result of the mergers.

Senator DANFORTH. Senator Cannon's final question is: One of the most important provisions in the Staggers Act is the one allowing for the negotiation of contracts for rates and services. While the provision has been used, and by some, extensively, it has been argued that many shippers will not enter into contracts because of the possibility of favorable regulation by the ICC, and that many railroads will not enter into contracts for the same reason.

Are there actions which you believe the ICC should take to insure that this provision is used as Congress intends it?

Ms. GRADISON. No, sir, I do not think so. I think that the contract provision is available for their use, and it is up to their discretion if they care to use it.

Senator DANFORTH. OK.

Well, thank you very much. You breezed right through, and as I say, there might be some more written questions that Senator Cannon or others might want to submit that I would ask you to answer for the record in the next 2 weeks.

Ms. GRADISON. Thank you.

Senator DANFORTH. Thank you.

[Whereupon, at 10:25 a.m., the committee was adjourned.]

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